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Waste Programs Division – Solid Waste Rule Development Process Stakeholder Workshop on Article 11 February 20, 2008

NOTES

A stakeholder workshop to obtain input and review possible modifications to Article 11 of the draft Solid Waste Rule was held on February 20, 2008. The workshop was conducted using the draft rule text dated 9-10-07. The draft rule text can be found at:

http://www.azdeq.gov/environ/waste/solid/download/swrule_091007.pdf

Due to time constraints, comments on Article 11 were not completed at this meeting. Stakeholders suggested completing the review of Article 11 at another time. Staff will schedule the completion of Article 11 and notify stakeholders.

The stakeholder comments are noted below. Italicized comments were recorded from comment cards and other written comments submitted by stakeholders. A list of attendees is attached to this document.

Stakeholder Meeting Schedule Changes

The next scheduled stakeholder meeting will be on March 6 to address Article 3. Meetings previously scheduled for March 13 and April 10 have been cancelled. This change will allow staff to provide text changes to stakeholders well in advance of meetings. Staff members will review comments, continue to post stakeholder comments, and post a new schedule.

Overview of Article 11

Martha Seaman provided an overview of the agency's approach to Article 11 and reviewed possible draft rule text changes made in response to stakeholder input. Draft language and changes under consideration are provisional during informal discussions such as these; all rule language is subject to the decisions that need to be made before formally proposing the rule.

Presentation highlights and information from agency staff members included:

- Municipal solid waste landfills are administered under 40 CFR Part 258. MSWLFs are currently exempt from aquifer protection permits under ARS § 49-250(B)(19) to avoid dual permitting.
- Equating construction and demolition landfills with the class of facilities known as non-municipal solid waste landfills is not accurate.

- Non-municipal solid waste landfills are required to get an APP. Permitting is based on 40 CFR Part 257 and APP statutes and rules.
- The differing approaches to MSWLFs and non-MSWLFs are difficult to reconcile. Significant differences include:
 - Groundwater monitoring
 - Points of compliance
 - Landfill design criteria (fundamental standards, such as best available demonstrated compliance techniques)
 - Notification to ADEQ regarding an exceedence of water quality standards.
- The agency proposes an approach to SWLF approval that utilizes the maximum APP standards incorporated into solid waste plan approval.
- The classification of MSWLF vs. non-MSWLF is independent of who owns and operates the landfill. A landfill that does not receive any municipal solid waste is considered a non-MSWLF.
- Waste tire facilities are not regulated under Article 11.
- In R18-13-1102, the agency is considering moving learning site information to Article 5. The location of a learning site would not result in a strict prohibition, but rather a consideration in the application process.
- The changes in R18-13-1104(B) respond to the criticism that the rule be no more stringent than APP. Section B is not a mandate. The changes in Section C address the presumptive standard. Section D now clarifies that D is not a mandate.
- R18-13-1104(H) was eliminated. However, if stakeholders believe a presumptive standard for evapotranspiration final covers is worthwhile, staff would appreciate input.
- The stricken language in R18-13-1105 is in response to stakeholder comments and some areas were removed to avoid duplicative language. We also plan to strike R18-13-1105(A)(4).
- If a hauler was redirected (see R18-13-1105) ADEQ would not require notification.
- The APP contingency plan concept is outlined in Section 1106.
- ADEQ has delegated authority from EPA to enforce Subtitle D.
- State requirements are at least as stringent as Subtitle D.
- It is the agency's intent to replace groundwater and corrective actions with APP standards.

Stakeholder comments and questions follow.

Global Comments

- Be consistent with the use of English, Metric or both throughout the rule.
- Replace “Department” with “Director” throughout. For example, a notification should technically be required to be sent to a specific person.

Article 11

- *It appears that ADEQ wants to regulate non-municipal solid waste landfills the same as municipal solid waste landfills, yet the type and volume of waste is significantly different. Can you not exempt non-municipal when no off-site waste is received and*

waste is adequately characterized (inert) and an APP contains landfill requirements?

- *Include definition of solid waste land disposal facilities that includes all three subcategories (waste piles, impoundments, and non-municipal solid waste landfills). This will ensure everyone knows which section applies to them.*
- *Due to the incorporation of 258 into the statute, 258 requirements do not need to be included in these rules. When your comments are being re-written the meaning is changed. R18-13-1102(A) for example.*
- *I am concerned about landfill liners, which fail usually earlier (10 years) rather than later (25 years).*
- *I am concerned about landfill gas, which I was told wasn't a big issue in Arizona, but it obviously is. If organic materials (food, yard waste) were banned from landfills and instead either composted aerobically for soil amendments or closed anaerobically decomposed to produce methane which could be 100% captured for energy production, we could effectively deal with this issue. "Yard waste" is an issue in fire prone desert areas. Here in Sedona the stuff has to be disposed of properly and in my view not burned.*
- *Is there some way advisement could be written into the rules? Otherwise the product is a health hazard to nearby neighborhoods, most likely a low income neighborhood legal issue.*
- *In New Mexico, rulemaking authority indicates that if you have applied for an APP before the SW plan permit, then the landfill is not subject to certain provision.*
- *Article 11 contains few distinctions between municipal and non-municipal solid waste landfills. Is there a BADCT yet for landfills?*
- *My preference would be to reference Part 257 and 258 and spell out changes, such as what Part 257 allows for regarding non-MSWLFs, and what Part 258 allows to be added to MSWLFs.*

Section

R18-13-1101(B)

- *Any lot or parcel with solid waste on the ground for over a year would be considered a solid waste facility.*
- *Should also see federal subtitle D.*
- *Some property owners may not discover waste for more than a year. Need a method to rebut presumption that the land has become a SWLF disposal facility.*
- *I am concerned with the agency's approach that the presumption issue can be dealt with through an enforcement action.*
- *Is this section trying to redefine a solid waste facility or create an enforcement issue?*
- *Under this section, remote areas that can only be accessed occasionally by a three-mile hike would become SWLF disposal.*
- *Presumptions can't be rebutted unless there is language written in to do so.*
- *Would this prohibit the use of screened (to remove litter/debris) street sweepings from being reused as dust control on road shoulders? This is a common practice in rural areas.*

- *Would this prohibit the use of nonhazardous used carbon filter media from being used as dust control (instead of or in addition to gravel) either onsite, vacant lots, road shoulders?*
- *I am assuming asphalt millings are not a solid waste. They are also used for dust control and stabilization.*
- *This should be limited to the disposal of trash and debris.*

R18-13-1102

- Why repeat the statute, especially Part 258 language in (1) and (2). This is not consistent throughout the rule.
- (2) – “FEMA floodplain” is used. Does this section allow for the use of county flood control district information? Counties use FEMA as a guideline. However, the county floodplain engineer has a more in-depth understanding and county information should be allowable.
- (2)(a) – ADWR provides the letter certifying flows.
- (2)(c) – “Floodplain” should say “100-year floodplain.” This usage is not specified in Part 258 but it is generally how floodplain is interpreted.
- (3) – There is a USCOE program that allows for trading wetlands. This section is more restrictive than federal language.
- (3, 4) – There is no provision for those with a conservation or mitigation plan in place.
- (3, 4) – These are planning and zoning issues for the most part.
- (4) – This is normally only triggered through a federal action. How did the agency make this determination?
- (4) – *This language doesn’t take into account mitigation measures that can be taken.*
- (6)(d) – This section is not in Part 258. Only in wetlands.

R18-13-1103(C)

- Changing (F) to (I) is a problem. (D) is prescriptive. Is (I) regardless of cost? (I) was previously intended for new technologies. (I) is now a scary prospect.
- This should also apply to new non-MSWLFs.
- Delete word “municipal.”

R18-13-1104

- May want to add language that other standards may be acceptable.
- Don’t like the “if” style shown throughout. Suggest changing Section C to Section B. Suggest then outlining the process such as, “an applicant may submit demonstration according to...”
- I am never going to agree to a prescriptive liner for all landfills.
- I am concerned about the use of APP standards for MSW because it is likely these will become prescriptive standards vs. a full BADCT demonstration.
- Where does Painted Desert Landfill stand when going from Subtitle D standards to the BADCT approach?
- *Suggest rewording: Municipal Solid Waste Landfills; Non-Municipal Solid Waste Land Disposal Facilities or Waste Piles: Design Standards.*
- *Wordiness makes it confusing.*
- (B) – How will POCs work?

- (C)(3) – This is not a requirement of Subtitle D and is more restrictive than federal standards.
- (C)(3) – Some states prefer to drain water and not allow it to enter groundwater.
- (C)(3) – *Remove duplication of R18-13-1104(B)(2).*
- (E) – Should specify where the 30 cm depth is applied. The language found in Subtitle D guidance document should be used.
- (E) – Subtitle D requires the language, “active.”
- (E)(1) – *Reword: ... generated by the active portion of the facility. The driveway, scales, admin office, parking lot shouldn't have to be included in the area where leachate is collected from.*
- (E)(3) – This is an operating criteria, not a design criteria.
- (E)(3) – What is the intent? Nothing in subtitle D requires this language.
- (G)(3) – Suggest replacing “prevent erosion” with “minimize erosion.”
- (G)(4) – Not sure this is possible in some areas of Arizona without an irrigation system. Suggest eliminating this section.
- (G)(4) – Could change “native” to “local.”
- (G)(9, 10) – Many landfills are not subject to 40 CFR 6 Subpart WWW. However, once this rule is followed, it puts them in a Title 5 air permit program. Suggest deleting (G)(9, 10).
- (G)(10) – Currently written to required the installation of a collection and removal system if any landfill gas exceedence occurs at ANY part of a landfill.
- (G)(10) – Should have to show an exceedence for this to apply.
- (G)(10) – This is more stringent than federal regulations.
- (G)(10) – Could be read to force requirements on a landfill that doesn't generate any gas.
- (H) ~~strikeout~~ – Arizona conditions would not require 30 inches.
- (H) ~~strikeout~~ – An ET cover acceptable under Section G should not be a problem under presumptive standards.
- (H) – This is more restrictive than federal Subtitle D and state statutes. Delete “gas management and closure cover systems.” Safety concerns are addressed in containment.
- (H) – Don't believe it would be safe to eliminate this section.
- (I)(1) – This is an operational issue. Also, it is too subjective.
- (I)(2) – What is “adequate?” This is subjective.
- (I)(3) – “Sufficient” is subjective.

R18-13-1105

- (A) – This section is a good example of non-APP requirements. It goes beyond Part 257, and some cases beyond Part 258.
- (A) – Should provide for landfill operator certification. Other states have this requirement.
- (A) – Should not require landfill operator certification.
- (A)(1) – *... and at site exits. Some sites are “drive thru” types.*
- (A)(3) – Delete, “as directed by local fire jurisdiction.”
- (A)(3, 4, 5) – Local fire control jurisdiction doesn't want anything to do with a fire at a landfill.
- (A)(4) – What is sufficient facility personnel?

- (A)(4) – Does ADEQ have authority regarding safety?
- (A)(4) – No one has facilities to deal with a subsurface fire.
- (A)(5) – “Two-way communication” is vague. This is also duplicative of Chapter 4, Section 412.
- (A)(6) – This is already covered in Section 407.
- (A)(6) – ... *use of temporary or permanent stormwater controls.*
- (B) – This would apply to all facilities and is not currently a requirement of non-MSWLFs.
- (B) – Prohibited waste such as receiving one waste tire would result in a notification every day.
- (B) – These requirements for notification would be more stringent than Part 258.
- (B)(1)(a) – Covered in Section 408.
- (B)(1)(c) – This is duplicative.
- (B)(1)(d) – *Notification should be limited to items that are a problem for the facility, immediately threat to human health or the environment. What is ADEQ trying to accomplish? What is ADEQ intending to do with these notifications?*
- (B)(2) – “Periodically” is vague.
- (B)(2) – Need definition of putrescible waste.
- (B)(2) – Could be issues regarding “showing” depending on the order of waste received.
- (B)(4) – Why “control” them, if monitoring shows there is nothing?
- (B)(4) – This is a repeat of Subtitle D.
- (B)(4)(c)(ii) – Replace “increased” with “alternative.”
- (B)(4)(d) – Single reading shouldn’t force a notification. Should be a verification step. This could save paperwork on both sides.
- (B)(4)(d) – I struggle with Part 258 requirements posted here. Will the rules appear twice, causing a violation of both Part 258 and Article 11?
- (B)(4)(d) – If Part 258 is revised, will the rule automatically be changed? Or, would these rules have to be changed?
- (C) – Gas to environment is an air quality permit issue. Suggest removing, “or gas.”
- (C) – Weekly inspection is too often.
- (C) – This should be part of training. “Inspecting and maintaining” might not reveal operator errors.

R18-13-1106

- Extensive contingency plans are covered in Section 412.
- A contingency plan is not a requirement under Subtitle D.
- What is a contingency plan from an APP perspective?
- This section should be compared to the corrective action section in Part 258. The triggers are different.

R18-13-1107

- Will we therefore be able to drop Subtitle D requirements such as statistical requirements?
- What is the point? The first thing you do with an anomaly in APP is to do a statistical analysis.

R18-13-1111

- Were “Waste Disposal Piles” intentionally left out?

R18-13-1113

- Were “Waste Disposal Piles” intentionally left out?

Comments on Other Articles

Article 10

- *In Ohio, the state wishes to encourage recycling and in that spirit, the State has a term called “Legitimate Recycling Facility” which is a facility that recycles at least 65% of the material that it receives. LRFs are exempt from permit requirements. This streamlined approach allows for the rapid construction of MRFs, commercial and industrial recycling, etc.*

Conclusions

Facilitator Theresa Gunn noted the following conclusions:

- Some stakeholders said that there should be a presumptive standard as previously discussed in Section R18-13-1104(H) and will provide input offline.
- Staff should look at the corrective action plan in Part 258 and the application of Part 258 rules to MSWLFs.
- Staff should avoid duplicative requirements for a tiny piece of a landfill.

Action Items

- Staff to provide stakeholders with a list of differences between the current approaches for MSWLFs and non-MSWLFs.
- Staff to schedule meeting for completion of Article 11 review.
- Staff to discuss anomaly issue regarding Section 1107 with APP staff members.

Attendees, including those participating via conference call, and others whose comments are reflected in these notes included:

Joe Abate, NSWMA
Harlan Agnew, Pima County Attorney
John T. Barlow, Arizona Strip Landfill Corp.
Dave Bearden, WMI
Joy Bell, City of Phoenix
Christina Betz, City of Glendale
J. S. Biedenharn, Coconino County
Pat Bourque, City of Flagstaff
Garth Bowers, Cornerstone Environmental Group
John Burton, EEC
Curtis Cox, Arizona Attorney General's Office

David Eaker, Pima County DEQ-SWM
Lana Fretz, Freeport McMoran
Karen Gaylord, Salman Lewis & Weldon
Joe Giudice, City of Phoenix
Chuck Hamstra, City of Phoenix
Hilary R. Hartline, City of Phoenix
Larry Hawke, Pima Cty. DEQ
Thomas Hillmer, APS
Stephanie Hinson, Salt River Landfill
Julie Hoffman, Maricopa Association of Governments
Douglas Junk, Cornerstone Environmental Group

Margaret LaBianca, Bryan Cave LLP
David Lickteis, Freeport McMoran
Bryce Mayers, Freeport McMoran
Jim Mikolatis, Tucson Env. Services
John Moody, Miller, LaSota & Peters
Donna Moran, Town of Gilbert
Martha G. Mottley, Freeport McMoran
Karl Moyers, Santa Cruz County
Kent Norton, Freeport McMoran
Cullin Patillo, Mohave County
James Peck, SWANA
Marlene Rayner, Sierra Club Sedona-
Verde Valley Group
Ken Robinson, City of Flagstaff
Jeremy Saline, Freeport McMoran

Catalina Sanchez, City of Tucson -- E.S.
Chris Schlabaugh, City of Chandler
SWS
Mark L. Schumacher, Freeport
McMoran
Norm Sandler, Microgy, Inc.
Sheree Sepulveda, City of Chandler
Stephen Smith, Hydro Geo Chem, Inc.
Jacqueline Strong, City of Chandler
Scott Thomas, Fennemore Craig
Steve Viny, Norton Environmental
David Wallis, Gallagher & Kennedy
Genevieve Young, Maricopa County
Environmental Services Department
Lori Zito, URS Corp.